

REFERENCES IN TEXT

The Budget Act, referred to in subsec. (b) heading, probably means the Congressional Budget Act of 1974, titles I through IX of Pub. L. 93-344, July 12, 1974, 88 Stat. 297, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2, The Congress, and Tables.

PRIOR PROVISIONS

A prior section 45 of act Aug. 1, 1956, was renumbered section 46 by section 118(1) of Pub. L. 101-246, and subsequently renumbered, and is set out as a Short Title of 1956 Amendment note under section 2651 of this title.

§ 2718. Fees received for use of Blair House

(a) Use of fees

Notwithstanding any other provision of law, for the fiscal years 1990 and 1991, funds received by the Department of State in connection with use of Blair House (including reimbursements and surcharges for services and goods provided and fees for use of Blair House facilities) may be credited to the appropriate appropriation account of the Department of State which is currently available. Such funds shall be available only for maintenance and other expenses of Blair House.

(h) Compliance with Budget Act

The authority of this section may be exercised only to such extent or in such amounts as are provided in advance in an appropriation Act.

(Aug. 1, 1956, ch. 841, title I, § 46, as added Feb. 16, 1990, Pub. L. 101-246, title I, § 119(2), 104 Stat. 26.)

REFERENCES IN TEXT

The Budget Act, referred to in subsec. (b) heading, probably means the Congressional Budget Act of 1974, titles I through IX of Pub. L. 93-344, July 12, 1974, 88 Stat. 297, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2, The Congress, and Tables.

PRIOR PROVISIONS

A prior section 46 of act Aug. 1, 1956, was renumbered section 47 by section 119(1) of Pub. L. 101-246, and subsequently renumbered, and is set out as a Short Title of 1956 Amendment note under section 2651 of this title.

§ 2719. Grants for training and education in international affairs

The Secretary of State may make grants to postsecondary educational institutions or students for the purpose of increasing the level of knowledge and awareness of and interest in employment with the Foreign Service, consistent with section 3905 of this title. To the extent possible, the Secretary shall give special emphasis to promoting such knowledge and awareness of, and interest in employment with, the Foreign Service among minority students. Any grants awarded shall be made pursuant to regulations to be established by the Secretary of State, which shall provide for a limit on the size of any specific grant and, regarding any grants to individuals, shall ensure that no grant recipient receives an amount of grants from one or more Federal programs which in the aggregate

would exceed the cost of his or her education, and shall require satisfactory educational progress by grantees as a condition of eligibility for continued receipt of grant funds.

(Aug. 1, 1956, ch. 841, title I, § 47, as added Feb. 16, 1990, Pub. L. 101-246, title I, § 150(2), 104 Stat. 42.)

PRIOR PROVISIONS

A prior section 47 of act Aug. 1, 1956, was renumbered section 48 by section 150(1) of Pub. L. 101-246, and is set out as a Short Title of 1956 Amendment note under section 2651 of this title.

CHAPTER 39—ARMS EXPORT CONTROL

SUBCHAPTER II—FOREIGN MILITARY SALES
AUTHORIZATIONS

Sec.
2767a. Repealed.

SUBCHAPTER III—MILITARY EXPORT
CONTROLS

2780. Transactions with countries supporting acts of international terrorism.
- (a) Prohibited transactions by United States Government.
 - (b) Prohibited transactions by United States persons.
 - (c) Transfers to governments and persons covered.
 - (d) Countries covered by prohibition.
 - (e) Publication of determinations.
 - (f) Rescission.
 - (g) Waiver.
 - (h) Exemption for transactions subject to National Security Act reporting requirements.
 - (i) Relation to other laws.
 - (j) Criminal penalty.
 - (k) Civil penalties; enforcement.
 - (l) Definitions.

SUBCHAPTER VII—CONTROL OF MISSILES
AND MISSILE EQUIPMENT OR TECHNOLOGY

2797. Licensing.
- (a) Establishment of list of controlled items.
 - (b) Referral of license applications.
 - (c) Information sharing.
- 2797a. Denial of transfer of missile equipment or technology by United States persons.
- (a) Sanctions.
 - (b) Discretionary sanctions.
 - (c) Waiver.
- 2797b. Transfers of missile equipment or technology by foreign persons.
- (a) Sanctions.
 - (b) Inapplicability with respect to MTCR adherents.
 - (c) Effect of enforcement actions by MTCR adherents.
 - (d) Advisory opinions.
 - (e) Waiver and report to Congress.
 - (f) Additional waiver.
 - (g) Exceptions.
- 2797c. Definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to sections 2272, 2291, 2291e, 2291f, 2304, 2311, 2318, 2321h, 2321i, 2349a, 2349aa-2, 2364, 2394-1, 2373, 2413, 2414, 2423, 2429, 2429a, 2778a, 3402 of this title; title 10 sections 130, 2344, 2350b, 2350c; title 12 section 635; title 15 section 4605; title 18 section 2516; title 28 section 901; title 49 App. section 1515a; title 50 section 415.

SUBCHAPTER I—FOREIGN AND NATIONAL SECURITY POLICY OBJECTIVES AND RESTRAINTS

§ 2751. Need for international defense cooperation and military export controls; Presidential waiver; report to Congress; arms sales policy

EX. ORD. NO. 11958. ADMINISTRATION OF CHAPTER

Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended by Ex. Ord. No. 12118, Feb. 6, 1979, 44 F.R. 7939; Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673; Ex. Ord. No. 12210, Apr. 16, 1980, 45 F.R. 26313; Ex. Ord. No. 12321, Sept. 14, 1981, 46 F.R. 46109; Ex. Ord. No. 12365, May 24, 1982, 47 F.R. 22933; Ex. Ord. No. 12423, May 36, 1983, 48 F.R. 24025; Ex. Ord. No. 12560, May 24, 1986, 51 F.R. 19159; Ex. Ord. No. 12680, July 5, 1989, 54 F.R. 28995; Ex. Ord. No. 12738, § 7, Dec. 14, 1990, 55 F.R. 52035, provided:

[See main edition for text of first par.]

SECTION 1. *Delegation of Functions.* The following functions conferred upon the President by the Arms Export Control Act (22 U.S.C. 2751 et seq.), hereinafter referred to as the Act, and related legislation, are delegated as follows:

[See main edition for text of (a) to (d)]

(e) Those under Section 23 of the Act [22 U.S.C. 2763] and section 571 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101-167) [22 U.S.C. 2763 note], to the Secretary of Defense, to be exercised in consultation with the Secretary of State and the Secretary of the Treasury, except that the President shall determine any rate of interest to be charged which is less than the market rate of interest.

[See main edition for text of (f) to (k)]

(l) Those under Section 38 of the Act [22 U.S.C. 2776]:

(1) to the Secretary of State, except as otherwise provided in this subsection. Designations, including changes in designations, by the Secretary of State of items or categories of items which shall be considered as defense articles and defense services subject to export control under Section 38 shall have the concurrence of the Secretary of Defense. The authority to undertake activities to ensure compliance with established export conditions may be redelegated to the Secretary of Defense, or to the head of another department or agency as appropriate, which shall exercise such functions in consultation with the Secretary of State;

[See main edition for text of (2) and (3); (m) to (p)]

(q) Those under Section 2(b)(6) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(6)) to the Secretary of State.

(r) Those under Section 588(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100-461) [Oct. 1, 1988, 102 Stat. 2288-51], to the Secretary of Defense, except with respect to the determination of an emergency as provided by subsection (b)(3). The Secretary of Defense in implementation of the functions delegated to him under section 588(b) shall consult with the Secretary of State.

Sec. 2. *Coordination.* (a) In addition to the specific provisions of Section 1 of this Order, the Secretary of State and the Secretary of Defense, in carrying out the functions delegated to them under this Order, shall consult with each other and with the heads of other departments and agencies, including the Secretary of the Treasury, the Director of the United States International Development Cooperation Agency, the Director of the Arms Control and Disarmament Agency, and the Chairman of the Export-

Import Bank, on matters pertaining to their responsibilities.

[See main edition for text of (b); Secs. 3 and 4]

§ 2753. Eligibility for defense services or defense articles

[See main edition for text of (a) to (e)]

(f) Repealed. Pub. L. 101-222, § 2(b), Dec. 12, 1989, 103 Stat. 1896

(As amended Pub. L. 101-222, § 2(b), Dec. 12, 1989, 103 Stat. 1896.)

AMENDMENTS

1989—Subsec. (f). Pub. L. 101-222 struck out subsec. (f) which directed termination of sales under this chapter to countries granting sanctuary to international terrorists. See section 2780 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2765, 2776, 2780 of this title; title 10 section 4542.

SUBCHAPTER II—FOREIGN MILITARY SALES AUTHORIZATIONS

§ 2761. Sales from stocks

[See main edition for text of (a) to (d)]

(e) Charges; reduction or waiver

(1) After September 30, 1976, letters of offer for the sale of defense articles or for the sale of defense services that are issued pursuant to this section or pursuant to section 2762 of this title shall include appropriate charges for—

(A) administrative services, calculated on an average percentage basis to recover the full estimated costs (excluding a pro rata share of fixed base operation costs) of administration of sales made under this chapter to all purchasers of such articles and services as specified in section 2792(b) of this title and section 2792(c) of this title;

(B) a proportionate amount of any nonrecurring costs of research, development, and production of major defense equipment (except for equipment wholly paid for either from funds transferred under section 503(a)(3) of the Foreign Assistance Act of 1961 [22 U.S.C. 2311(a)(3)] or from funds made available on a nonrepayable basis under section 2763 of this title); and

(C) the recovery of ordinary inventory losses associated with the sale from stock of defense articles that are being stored at the expense of the purchaser of such articles.

(2) The President may reduce or waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B) for particular sales that would, if made, significantly advance United States Government interests in North Atlantic Treaty Organization standardization, standardization with the Armed Forces of Japan, Australia, or New Zealand in furtherance of the mutual defense treaties between the United States and those countries, or foreign procurement in the United States under coproduction arrangements.

[See main edition for text of (3); (f) to (i)]

(As amended Pub. L. 101-165, title IX, § 9104(c), Nov. 21, 1989, 103 Stat. 1152.)

REFERENCES IN TEXT

Section 2767a of this title, referred to in subsec. (g), was repealed by Pub. L. 101-189, div. A, title IX, § 931(d)(2), Nov. 29, 1989, 103 Stat. 1535. See section 2350a of Title 10, Armed Forces.

AMENDMENTS

1989—Subsec. (e)(1)(A), Pub. L. 101-165, § 9104(c)(1), inserted reference to section 2792(b) and (c) of this title.

Subsec. (e)(1)(B), Pub. L. 101-165, § 9104(c)(2), (3), redesignated subpar. (C) as (B) and inserted exception for equipment wholly paid for from funds transferred under the Foreign Assistance Act of 1961 or from funds made available under section 2763 of this title. Former subpar. (B), which included charges for any use of plant and production equipment in connection with defense articles, was struck out.

Subsec. (e)(1)(C), (D), Pub. L. 101-165, § 9104(c)(3), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (e)(2), Pub. L. 101-165, § 9104(c)(4), substituted reference to par. (1)(B) for reference to pars. (1)(B) and (1)(C).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2311, 2321, 2751, 2765, 2767, 2775, 2776, 2777, 2791, 2792, 2794, 2795 of this title; title 10 sections 114, 2350c.

§ 2763. Credit sales

[See main edition for text of (a) to (d)]

(e) Payments on account of prior credits or loans

(1) Funds made available to carry out this section may be used by a foreign country to make payments of principal and interest which it owes to the United States Government on account of credits previously extended under this section or loans previously guaranteed under section 2764 of this title, subject to paragraph (2).

(2) Funds made available to carry out this section may not be used for prepayment of principal or interest pursuant to the authority of paragraph (1).

(As amended Pub. L. 101-513, title V, § 580, Nov. 5, 1990, 104 Stat. 2045.)

AMENDMENTS

1990—Subsec. (c), Pub. L. 101-513 added subsec. (e).

DELEGATION OF FUNCTIONS

Functions of President under this section and section 580 of Pub. L. 100-461, see Similar Provisions note below, except those functions relating to determinations of a rate of interest which is less than the market rate, delegated to Secretary of Defense, to be exercised in consultation with Secretary of State and Secretary of the Treasury, by section 1(e) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SIMILAR PROVISIONS

Provisions similar to those appearing in last sentence of subsec. (a) of this section appear in the following appropriation acts:

Pub. L. 101-513, title V, § 561, Nov. 5, 1990, 104 Stat. 2026.

Pub. L. 101-167, title V, § 571, Nov. 21, 1989, 103 Stat. 1245.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2621, 2311, 2360, 2761, 2764, 2771, 2774, 2775, 2776, 2777, 2791 of this title.

§ 2764. Guaranties

FOREIGN MILITARY SALES DEBT REFORM

Pub. L. 101-513, title III, Nov. 5, 1990, 104 Stat. 1999, provided that: "Funds made available by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 [Pub. L. 100-202, § 101(e) [title III, § 301], set out below], for obligation and expenditure after October 1, 1988, subject to a Presidential budget request, under the heading 'Foreign Military Sales Debt Reform', subsection (b) 'Interest Rate Reduction' shall be available, subject to the same conditions and provisos, only after October 1, 1991."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 101-167, title III, Nov. 21, 1989, 103 Stat. 1214.

Pub. L. 100-461, title III, § 301, Oct. 1, 1988, 102 Stat. 2268-18.

Pub. L. 100-202, § 101(e) [title III, § 301], Dec. 22, 1987, 101 Stat. 1329-131, 1329-148, as amended by Pub. L. 101-167, title III, Nov. 21, 1989, 103 Stat. 1214, provided in part that:

"(a) REFINANCING.—Notwithstanding any other provision of law, the President is authorized during fiscal years 1988 through 1991 to transfer existing United States guaranties of outstanding Foreign Military Sales (FMS) credit debt, or to issue new guaranties, either of which would be applied to loans, bonds, notes or other obligations made or issued (as the case may be) by private United States financial institutions (the private lender) to finance the prepayment at par of the principal amounts maturing after September 30, 1989 of existing FMS loans bearing interest rates of eight percent or higher, and arrearages thereon. The loans, bonds, notes or other obligations are hereinafter referred to as the 'private loan': *Provided*, That such guaranties which are transferred or are made pursuant to paragraph (a) shall cover no more and no less than ninety percent of the private loan or any portion or derivative thereof plus unpaid accrued interest and arrearages, if any, outstanding at the time of guaranty transfer or extension: *Provided further*, That the total amount of the guaranty of the private loan cannot exceed ninety percent of the outstanding principal, unpaid accrued interest and arrearages, if any, at any time: *Provided further*, That of the total amount of the private loan, the ninety percent guaranteed portion of the private loan cannot be separated from the private loan at any time: *Provided further*, That no sums in addition to the payment of the outstanding principal amounts maturing after September 30, 1989 of the loan (or advance), plus unpaid accrued interest thereon, and arrearages, if any, shall be charged by the private lender or the Federal Financing Bank as a result of such prepayment against the borrower, the guarantor, or the Guaranty Reserve Fund (GRF), except that the private lender may include, in the interest rate charged, a standard fee to cover costs, such fee which will be set at prevailing market rates, and no guaranty fee shall be charged on guarantees transferred or issued pursuant to this provision: *Provided further*, That the terms of guaranties transferred or issued under this paragraph shall be exactly the same as the existing loans or guaranties, except as modified by this paragraph and including but not limited to the final maturity and principal and interest payment structure of the existing loans which shall not be altered, except that the repayments of the private loan issued debt may be consolidated into two payments per year: *Provided further*, That the private loan or guarantees transferred or issued pursuant to this paragraph shall be fully and freely transfera-

ble, except that any guaranty transferred or extended shall cease to be effective if the private loan or any derivative thereof is to be used to provide significant support for any non-registered obligation: *Provided further*, That for purposes of sections 23 and 24 of the Arms Export Control Act (AECA) [22 U.S.C. 2763, 2764], the term 'defense services' shall be deemed to include the refinancing of FMS debt outstanding at the date of the enactment of this Act [Dec. 22, 1987]: *Provided further*, That not later than ninety days after the enactment of this Act, the Secretary of the Treasury (Secretary) shall issue regulations to carry out the purposes of this heading and that in issuing such regulations, the Secretary shall (1) facilitate the prepayment of loans and loan advances hereunder, (2) provide for full processing of each application within thirty days of its submission to the Secretary, and (3) except as provided in section 24(a) of the AECA, impose no restriction that increases the cost to borrowers of obtaining private financing for prepayment hereunder or that inhibits the ability of the borrower to enter into prepayment arrangements hereunder: *Provided further*, That the Secretary of State shall transmit to the Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committees on Appropriations of the House of Representatives and Senate, a copy of the text of any agreement entered into pursuant to this section not more than thirty days after its entry into force, together with a description of the transaction.

"(b) **INTEREST RATE REDUCTION.**—Notwithstanding any other provision of law, there is hereby appropriated such sums as may be necessary, but not more than \$270,000,000, to be made available after October 1, 1988 to the Secretary of Defense for the Defense Security Assistance Agency for deposit into a new account, to remain available until expended: *Provided*, That the funds shall be used solely for the purpose of lowering the interest rate on Foreign Military Sales (FMS) credits which were financed through the Federal Financing Bank (FFB) for countries which do not refinance one or more FFB loans pursuant to paragraph (a) of this heading, and which loans have interest rates exceeding eight percent, down to an interest rate of eight percent for the remaining life of such loans: *Provided further*, That these funds shall be available only subject to a Presidential budget request: *Provided further*, That it is the intent of the Congress that these funds shall be available to all countries having FMS credits from the FFB that carry interest rates in excess of eight percent.

[See main edition for text of (c) and (d)]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2763, 2765, 2771, 2774, 2775, 2776, 2777, 2791, 3402 of this title.

§ 2767. Authority of President to enter into cooperative projects with friendly foreign countries

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2753, 2791 of this title; title 10 sections 2350b, 4542.

§ 2767a. Repealed. Pub. L. 101-189, div. A, title IX, § 931(d)(2), Nov. 29, 1989, 103 Stat. 1535

Section, Pub. L. 99-661, div. A, title XI, § 1105, Nov. 14, 1986, 100 Stat. 3965; Pub. L. 100-456, div. A, title X, § 1007, Sept. 29, 1988, 102 Stat. 2040, related to cooperative research and development with major non-NATO allies. See section 2350a of Title 10, Armed Forces.

SUBCHAPTER II-B—SALES TO UNITED STATES COMPANIES FOR INCORPORATION INTO END ITEMS

§ 2770. General authority

(a) Sale of defense articles and services by President to United States companies; restriction on performance of services; reimbursement credited to selling agency

Subject to the conditions specified in subsection (b) of this section, the President may, on a negotiated contract basis, under cash terms (1) sell defense articles at not less than their estimated replacement cost (or actual cost in the case of services), or (2) procure or manufacture and sell defense articles at not less than their contract or manufacturing cost to the United States Government, to any United States company for incorporation into end items (and for concurrent or follow-on support) to be sold by such a company either (i) on a direct commercial basis to a friendly foreign country or international organization pursuant to an export license or approval under section 2778 of this title or (ii) in the case of ammunition parts subject to subsection (b) of this section, using commercial practices which restrict actual delivery directly to a friendly foreign country or international organization pursuant to approval under section 2778 of this title. The President may also sell defense services in support of such sales of defense articles, subject to the requirements of this chapter: *Provided, however*, That such services may be performed only in the United States. The amount of reimbursement received from such sales shall be credited to the current applicable appropriation, fund, or account of the selling agency of the United States Government.

[See main edition for text of (b) and (c)]

(As amended Pub. L. 101-165, title IX, § 9097, Nov. 21, 1989, 103 Stat. 1150.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-165 inserted "either (i)" after "such a company" in first sentence and inserted before period at end of first sentence "or (ii) in the case of ammunition parts subject to subsection (b) of this section, using commercial practices which restrict actual delivery directly to a friendly foreign country or international organization pursuant to approval under section 2778 of this title".

SUBCHAPTER III—MILITARY EXPORT CONTROLS

§ 2771. Military sales authorizations and ceilings

[See main edition for text of (a) to (c)]

(d) Aggregate acquisition cost ceiling for ordered excess defense articles

The aggregate acquisition cost to the United States of excess defense articles ordered by the President in any fiscal year after fiscal year 1976 for delivery to foreign countries or international organizations under the authority of chapter 2 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2311] or pursuant to sales under this chapter may not exceed

\$250,000,000 (exclusive of ships and their on-board stores and supplies transferred in accordance with law, and of any defense articles with respect to which the President submits a certification under section 2776(b) of this title.).¹

(As amended Pub. L. 101-513, title V, § 596(c), Nov. 5, 1990, 104 Stat. 2062.)

AMENDMENTS

1990—Subsec. (d), Pub. L. 101-513 inserted “, and of any defense articles with respect to which the President submits a certification under section 2776(b) of this title.” after “law”.

§ 2776. Reports and certifications to Congress on military exports

(a) Report by President; contents

The President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate not more than sixty days after the end of each quarter an unclassified report (except that any material which was transmitted in classified form under subsection (b)(1) or (c)(1) of this section may be contained in a classified addendum to such report, and any letter of offer referred to in paragraph (1) of this subsection may be listed in such addendum unless such letter of offer has been the subject of an unclassified certification pursuant to subsection (b)(1) of this section, and any information provided under paragraph (11) of this subsection may also be provided in a classified addendum) containing—

[See main edition for text of (1) to (7)]

(8) a description of each payment, contribution, gift, commission, or fee reported to the Secretary of State under section 2779 of this title, including (A) the name of the person who made such payment, contribution, gift, commission, or fee; (B) the name of any sales agent or other person to whom such payment, contribution, gift, commission, or fee was paid; (C) the date and amount of such payment, contribution, gift, commission, or fee; (D) a description of the sale in connection with which such payment, contribution, gift, commission, or fee was paid; and (E) the identification of any business information considered confidential by the person submitting it which is included in the report;

(9) a listing of each sale under section 2769 of this title during the quarter for which such report is made, specifying (A) the purchaser, (B) the United States Government department or agency responsible for implementing the sale, (C) an estimate of the dollar amount of the sale, and (D) a general description of the real property facilities to be constructed pursuant to such sale;

(10) a listing of the consents to third-party transfers of defense articles or defense services which were granted, during the quarter for which such report is submitted, for purposes of section 2753(a)(2) of this title, the regulations issued under section 2778 of this

title, or section 505(a)(1)(B) of the Foreign Assistance Act of 1961 [22 U.S.C. 2314(a)(1)(B)], if the value (in terms of original acquisition cost) of the defense articles or defense services to be transferred is \$1,000,000 or more; and

(11) a listing of all munitions items (as defined in section 2780(d)(1) of this title) which were sold, leased, or otherwise transferred by the Department of Defense to any other department, agency, or other entity of the United States Government during the quarter for which such report is submitted (including the name of the recipient Government entity and a discussion of what that entity will do with those munitions items) if—

(A) the value of the munitions items was \$250,000 or more; or

(B) the value of all munitions items transferred to that Government department, agency, or other entity during that quarter was \$250,000 or more;

excluding munitions items transferred (i) for disposition or use solely within the United States, or (ii) for use in connection with intelligence activities subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities).

For each letter of offer to sell under paragraphs (1) and (2), the report shall specify (i) the foreign country or international organization to which the defense article or service is offered or was sold, as the case may be; (ii) the dollar amount of the offer to sell or the sale and the number of defense articles offered or sold, as the case may be; (iii) a description of the defense article or service offered or sold, as the case may be; and (iv) the United States Armed Force or other agency of the United States which is making the offer to sell or the sale, as the case may be.

(b) Letter of offer to sell defense articles, services, design and construction services, or major equipment; submission of numbered Presidential certification and additional statement; contents; emergency justification statement; enhancements or upgrades in sensitivity of technology or capability of major defense articles, equipment, or services

(1) In the case of any letter of offer to sell any defense articles or services under this chapter for \$50,000,000 or more, any design and construction services for \$200,000,000 or more, or any major defense equipment for \$14,000,000 or more, before such letter of offer is issued, the President shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a numbered certification with respect to such offer to sell containing the information specified in clauses (i) through (iv) of subsection (a) of this section, or (in the case of a sale of design and construction services) the information specified in clauses (A) through (D) of paragraph (9) of subsection (a) of this section, and a description, containing the information specified in paragraph (8) of subsection (a) of

¹ So in original. The period after “title” probably should not appear.

this section, of any contribution, gift, commission, or fee paid or offered or agreed to be paid in order to solicit, promote, or otherwise to secure such letter of offer. Such numbered certifications shall also contain an item, classified if necessary, identifying the sensitivity of technology contained in the defense articles, defense services, or design and construction services, proposed to be sold, and a detailed justification of the reasons necessitating the sale of such articles or services in view of the sensitivity of such technology. In addition, the President shall, upon the request of such committee or the Committee on Foreign Affairs of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request—

[See main edition for text of (A) to (C)]

(D) an evaluation, prepared by the Director of the Arms Control and Disarmament Agency in consultation with the Secretary of State and the Secretary of Defense, of the manner, if any, in which the proposed sale would—

- (i) contribute to an arms race;
- (ii) support international terrorism;
- (iii) increase the possibility of an outbreak or escalation of conflict;
- (iv) prejudice the negotiation of any arms controls; or
- (v) adversely affect the arms control policy of the United States;

[See main edition for text of (E) to (P)]

A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (ii) and the details of the description specified in clause (iii) of subsection (a) of this section may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States. The letter of offer shall not be issued, with respect to a proposed sale to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, or New Zealand, if the Congress, within fifteen calendar days after receiving such certification, or with respect to a proposed sale to any other country or organization, if the Congress within thirty calendar days after receiving such certification, enacts a joint resolution prohibiting the proposed sale, unless the President states in his certification that an emergency exists which requires such sale in the national security interests of the United States. If the President states in his certification that an emergency exists which requires the proposed sale in the national security interest of the United States, thus waiving the congressional review requirements of this subsection, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate issuance of the letter of offer and a discussion of the national security interests involved.

[See main edition for text of (2) to (5); (c) and (d)]

(As amended Pub. L. 101-222, §§ 3(b), 7, Dec. 12, 1989, 103 Stat. 1896, 1899.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (a)(11), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the National Security Act of 1947 is classified generally to subchapter III (§ 413 et seq.) of chapter 15 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50 and Tables.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-222, § 7(b), inserted “, and any information provided under paragraph (11) of this subsection may also be provided in a classified addendum” after “(b)(1) of this section” in introductory provisions.

Subsec. (a)(10), (11). Pub. L. 101-222, § 7(a), added pars. (10) and (11).

Subsec. (b)(1)(D)(ii) to (v). Pub. L. 101-222, § 3(b), added cl. (ii) and redesignated former cls. (ii) through (iv) as (iii) through (v), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2373, 2753, 2766, 2767, 2771, 3402 of this title.

§ 2777. Fiscal provisions relating to foreign military sales credits

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 114.

§ 2778. Control of arms exports and imports

(a) Presidential control of exports and imports of defense articles and services, guidance of policy, etc.; designation of United States Munitions List; issuance of export licenses; condition for export; negotiations information

[See main edition for text of (1)]

(2) Decisions on issuing export licenses under this section shall be made in coordination with the Director of the United States Arms Control and Disarmament Agency and shall take into account the Director's opinion as to whether the export of an article will contribute to an arms race, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements.

[See main edition for text of (3); (b) to (g)]

(h) Judicial review of designation of items as defense articles or services

The designation by the President (or by an official to whom the President's functions under subsection (a) of this section have been duly delegated), in regulations issued under this section, of items as defense articles or defense services for purposes of this section shall not be subject to judicial review.

(As amended Pub. L. 101-222, §§ 3(a), 6, Dec. 12, 1989, 103 Stat. 1896, 1899.)

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101-222, § 3(a), inserted “support international terrorism,” after “arms race.”

Subsec. (h). Pub. L. 101-222, § 6, added subsec. (h).

CONTINUATION OF EXPORT CONTROL REGULATIONS

Section 3 of Ex. Ord. No. 12730, Sept. 30, 1990, 55 F.R. 40373, set out as a note under section 1701 of Title 50, War and National Defense, provided that: "Provisions for administration of section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) may be made and shall continue in full force and effect until amended or revoked under the authority of section 203 of the Act (50 U.S.C. 1702). To the extent permitted by law, this order also shall constitute authority for the issuance and continuation in full force and effect of all rules and regulations by the President or his delegate, and all orders, licenses, and other forms of administrative action issued, taken, or continued in effect pursuant thereto, relating to the administration of section 38(e)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2304, 2373, 2751, 2753, 2767, 2770, 2776, 2779, 2780, 2791, 2794, 2797a of this title; title 10 section 2208; title 12 section 635; title 18 sections 1956, 2516; title 26 section 5847; title 50 section 415; title 50 App. sections 2410, 2410b, 2416.

§ 2780. Transactions with countries supporting acts of international terrorism

(a) Prohibited transactions by United States Government

The following transactions by the United States Government are prohibited:

(1) Exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to a country described in subsection (d) of this section under the authority of this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or any other law (except as provided in subsection (h) of this section). In implementing this paragraph, the United States Government—

(A) shall suspend delivery to such country of any such item pursuant to any such transaction which has not been completed at the time the Secretary of State makes the determination described in subsection (d) of this section, and

(B) shall terminate any lease or loan to such country of any such item which is in effect at the time the Secretary of State makes that determination.

(2) Providing credits, guarantees, or other financial assistance under the authority of this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or any other law (except as provided in subsection (h) of this section), with respect to the acquisition of any munitions item by a country described in subsection (d) of this section. In implementing this paragraph, the United States Government shall suspend expenditures pursuant to any such assistance obligated before the Secretary of State makes the determination described in subsection (d) of this section. The President may authorize expenditures otherwise required to be suspended pursuant to the preceding sentence if the President has determined, and reported to the Congress, that suspension of those expenditures causes undue financial hardship to a supplier, ship-

per, or similar person and allowing the expenditure will not result in any munitions item being made available for use by such country.

(3) Consenting under section 2753(a) of this title, under section 505(a) of the Foreign Assistance Act of 1961 [22 U.S.C. 2314(a)], under the regulations issued to carry out section 2778 of this title, or under any other law (except as provided in subsection (h) of this section), to any transfer of any munitions item to a country described in subsection (d) of this section. In implementing this paragraph, the United States Government shall withdraw any such consent which is in effect at the time the Secretary of State makes the determination described in subsection (d) of this section, except that this sentence does not apply with respect to any item that has already been transferred to such country.

(4) Providing any license or other approval under section 2778 of this title for any export or other transfer (including by means of a technical assistance agreement, manufacturing licensing agreement, or coproduction agreement) of any munitions item to a country described in subsection (d) of this section. In implementing this paragraph, the United States Government shall suspend any such license or other approval which is in effect at the time the Secretary of State makes the determination described in subsection (d) of this section, except that this sentence does not apply with respect to any item that has already been exported or otherwise transferred to such country.

(5) Otherwise facilitating the acquisition of any munitions item by a country described in subsection (d) of this section. This paragraph applies with respect to activities undertaken—

(A) by any department, agency, or other instrumentality of the Government,

(B) by any officer or employee of the Government (including members of the United States Armed Forces), or

(C) by any other person at the request or on behalf of the Government.

The Secretary of State may waive the requirements of the second sentence of paragraph (1), the second sentence of paragraph (3), and the second sentence of paragraph (4) to the extent that the Secretary determines, after consultation with the Congress, that unusual and compelling circumstances require that the United States Government not take the actions specified in that sentence.

(h) Prohibited transactions by United States persons

(1) In general

A United States person may not take any of the following actions:

(A) Exporting any munitions item to any country described in subsection (d) of this section.

(B) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any country described in subsection (d) of this section.

(C) Selling, leasing, loaning, granting, or otherwise providing any munitions item to

any recipient which is not the government of or a person in a country described in subsection (d) of this section if the United States person has reason to know that the munitions item will be made available to any country described in subsection (d) of this section.

(D) Taking any other action which would facilitate the acquisition, directly or indirectly, of any munitions item by the government of any country described in subsection (d) of this section, or any person acting on behalf of that government, if the United States person has reason to know that that action will facilitate the acquisition of that item by such a government or person.

(2) Liability for actions of foreign subsidiaries, etc.

A United States person violates this subsection if a corporation or other person that is controlled in fact by that United States person (as determined under regulations, which the President shall issue) takes an action described in paragraph (1) outside the United States.

(3) Applicability to actions outside the United States

Paragraph (1) applies with respect to actions described in that paragraph which are taken either within or outside the United States by a United States person described in subsection (1)(3)(A) or (B) of this section. To the extent provided in regulations issued under subsection (1)(3)(D) of this section, paragraph (1) applies with respect to actions described in that paragraph which are taken outside the United States by a person designated as a United States person in those regulations.

(c) Transfers to governments and persons covered

This section applies with respect to—

(1) the acquisition of munitions items by the government of a country described in subsection (d) of this section; and

(2) the acquisition of munitions items by any individual, group, or other person within a country described in subsection (d) of this section, except to the extent that subparagraph (D) of subsection (b)(1) of this section provides otherwise.

(d) Countries covered by prohibition

The prohibitions contained in this section apply with respect to a country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism.

(e) Publication of determinations

Each determination of the Secretary of State under subsection (d) of this section shall be published in the Federal Register.

(f) Rescission

A determination made by the Secretary of State under subsection (d) of this section may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate—

(1) before the proposed rescission would take effect, a report certifying that—

(A) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(B) that government is not supporting acts of international terrorism; and

(C) that government has provided assurances that it will not support acts of international terrorism in the future; or

(2) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(A) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(B) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(g) Waiver

The President may waive the prohibitions contained in this section with respect to a specific transaction if—

(1) the President determines that the transaction is essential to the national security interests of the United States; and

(2) not less than 15 days prior to the proposed transaction, the President—

(A) consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate; and

(B) submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing—

(i) the name of any country involved in the proposed transaction, the identity of any recipient of the items to be provided pursuant to the proposed transaction, and the anticipated use of those items;

(ii) a description of the munitions items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction (or if the items are transferred by other than sale, the manner in which they will be provided);

(iii) the reasons why the proposed transaction is essential to the national security interests of the United States and the justification for such proposed transaction;

(iv) the date on which the proposed transaction is expected to occur; and

(v) the name of every United States Government department, agency, or other entity involved in the proposed transaction, every foreign government involved in the proposed transaction, and every private party with significant participation in the proposed transaction.

To the extent possible, the information specified in subparagraph (B) of paragraph (2) shall be provided in unclassified form, with any classified information provided in an addendum to the report.

(h) Exemption for transactions subject to National Security Act reporting requirements

The prohibitions contained in this section do not apply with respect to any transaction subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities).

(i) Relation to other laws

(1) In general

With regard to munitions items controlled pursuant to this chapter, the provisions of this section shall apply notwithstanding any other provision of law, other than section 614(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)).

(2) Section 614(a) waiver authority

If the authority of section 614(a) of the Foreign Assistance Act of 1961 [22 U.S.C. 2364(a)] is used to permit a transaction under that Act [22 U.S.C. 2151 et seq.] or this chapter which is otherwise prohibited by this section, the written policy justification required by that section shall include the information specified in subsection (g)(2)(B) of this section.

(j) Criminal penalty

Any person who willfully violates this section shall be fined for each violation not more than \$1,000,000, imprisoned not more than 10 years, or both.

(k) Civil penalties; enforcement

In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies, and officials by sections 11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979 [50 App. U.S.C. 2410(c), (e), (g), 2411(a)] (subject to the same terms and conditions as are applicable to such powers under that Act [50 App. U.S.C. 2401 et seq.]), except that, notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed \$500,000.

(l) Definitions

As used in this section—

(1) the term “munitions item” means any item enumerated on the United States Munitions list¹ (without regard to whether the item is imported into or exported from the United States);

(2) the term “United States”, when used geographically, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States; and

(3) the term “United States person” means—

(A) any citizen or permanent resident alien of the United States;

(B) any sole proprietorship, partnership, company, association, or corporation having its principal place of business within the

United States or organized under the laws of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States;

(C) any other person with respect to that person's actions while in the United States; and

(D) to the extent provided in regulations issued by the Secretary of State, any person that is not described in subparagraph (A), (B), or (C) but—

(i) is a foreign subsidiary or affiliate of a United States person described in subparagraph (B) and is controlled in fact by that United States person (as determined in accordance with those regulations), or

(ii) is otherwise subject to the jurisdiction of the United States.

with respect to that person's actions while outside the United States.

(As amended Pub. L. 101-222, § 2(a), Dec. 12, 1989, 103 Stat. 1892.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsecs. (a)(1), (2) and (i)(2), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The National Security Act of 1947, referred to in subsec. (h), is act July 28, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the National Security Act of 1947 is classified generally to subchapter III (§ 413 et seq.) of chapter 15 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50.

The Export Administration Act of 1979, referred to in subsec. (k), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of Title 50, Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.

AMENDMENTS

1989—Pub. L. 101-222 substituted “Transactions with” for “Exports to” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) PROHIBITION.—Except as provided in subsection (b) of this section, items on the United States Munitions List may not be exported to any country which the Secretary of State has determined, for purposes of section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), has repeatedly provided support for acts of international terrorism.

“(b) WAIVER.—The President may waive the prohibition contained in subsection (a) of this section in the case of a particular export if the President determines that the export is important to the national interests of the United States and submits to the Congress a report justifying that determination and describing the proposed export. Any such waiver shall expire at the end of 90 days after it is granted unless the Congress enacts a law extending the waiver.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2371 of this title.

¹ So in original. Probably should be capitalized.

SUBCHAPTER IV—GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS PROVISIONS

§ 2792. Administrative expenses

[See main edition for text of (a)]

(b) Charges for administrative expenses and official reception and representation expenses

Charges for administrative services calculated under section 2761(e)(1)(A) of this title shall include recovery of administrative expenses and official reception and representation expenses incurred by any department or agency of the United States Government, including any mission or group thereof, in carrying out functions under this chapter when—

(1) such functions are primarily for the benefit of any foreign country;

(2) such expenses are not directly and fully charged to, and reimbursed from amounts received for, sale of defense services under section 2761(a) of this title; and

(3) such expenses are neither salaries of the Armed Forces of the United States nor represent unfunded estimated costs of civilian retirement and other benefits.

[See main edition for text of (c)]

(As amended Pub. L. 101-165, title IX, § 9104(b)(1), Nov. 21, 1989, 103 Stat. 1152.)

AMENDMENTS

1989—Subsec. (b)(3). Pub. L. 101-165 added par. (3).

§ 2794. Definitions

For purposes of this chapter, the term—

[See main edition for text of (1) to (3)]

(4) “defense service”, except as provided in paragraph (7) of this section, includes any service, test, inspection, repair, training, publication, technical or other assistance, or defense information (as defined in section 2403(e) of this title), used for the purposes of making military sales, but does not include design and construction services under section 2769 of this title;

[See main edition for text of (5) to (8); credits]

CODIFICATION

Par. (4) is set out in this supplement to correct typographical error appearing in the main edition.

SUBCHAPTER V—SPECIAL DEFENSE ACQUISITION FUND

§ 2795. Fund

(a) Establishment; purposes; special requirements and responsibilities; continuous orders for certain articles and services; articles for narcotics control purposes

[See main edition for text of (1) to (3)]

(4)(A) The Fund shall also be used to acquire defense articles that are particularly suited for use for narcotics control purposes and are appropriate to the needs of recipient countries, such as small boats, planes (including helicopters), and communications equipment.

(B) Each report pursuant to section 2795b(a) of this title shall designate the defense articles that have been acquired or are to be acquired pursuant to this paragraph and the defense articles acquired under this subchapter that were transferred for use in narcotics control purposes.

[See main edition for text of (b) and (c)]

(As amended Pub. L. 101-231, § 4, Dec. 13, 1989, 103 Stat. 1957.)

AMENDMENTS

1989—Subsec. (a)(4). Pub. L. 101-231 added par. (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 114.

§ 2795b. Annual reports to Congress

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2795 of this title.

SUBCHAPTER VI—LEASES OF DEFENSE ARTICLES AND LOAN AUTHORITY FOR COOPERATIVE RESEARCH AND DEVELOPMENT PURPOSES

§ 2796. Leasing authority

(a) Preconditions

The President may lease defense articles in the stocks of the Department of Defense to an eligible foreign country or international organization if—

[See main edition for text of (1) to (3)]

The requirement of paragraph (3) shall not apply to leases entered into for purposes of cooperative research or development, military exercises, or communications or electronics interface projects, or to any defense article which has passed three-quarters of its normal service life. The President may waive the requirement of paragraph (3) with respect to a lease which is made in exchange with the lessee for a lease on substantially reciprocal terms of defense articles for the Department of Defense, except that this waiver authority—

[See main edition for text of (A)]

(B) may be exercised only during the fiscal year 1991 and only with respect to one country, unless the Congress hereafter provides otherwise.

The preceding sentence does not constitute authorization of appropriations for payments by the United States for leased articles.

[See main edition for text of (b) and (c)]

(As amended Pub. L. 101-167, title V, § 550, Nov. 21, 1989, 103 Stat. 1235; Pub. L. 101-513, title V, § 546, Nov. 5, 1990, 104 Stat. 2019.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-513 substituted “1991” for “1990” in par. (B).

1989—Subsec. (a). Pub. L. 101-167 substituted “1990” for “1989” in par. (B).

§ 2796d. Loan of materials, supplies, and equipment for research and development purposes

REFERENCES IN TEXT

Section 2767a of this title, referred to in subsec. (d), was repealed by Pub. L. 101-189, div. A, title IX, § 931(d)(2), Nov. 29, 1989, 103 Stat. 1535. See section 2350a of Title 10, Armed Forces.

SUBCHAPTER VII—CONTROL OF MISSILES AND MISSILE EQUIPMENT OR TECHNOLOGY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 50 App. section 2410b.

§ 2797. Licensing

(a) Establishment of list of controlled items

The Secretary of State, in consultation with the Secretary of Defense and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the United States Munitions List, a list of all items on the MTCR Annex the export of which is not controlled under section 2405(l) of title 50, Appendix.

(b) Referral of license applications

(1) A determination of the Secretary of State to approve a license for the export of an item on the list established under subsection (a) of this section may be made only after the license application is referred to the Secretary of Defense.

(2) Within 10 days after a license is issued for the export of an item on the list established under subsection (a) of this section, the Secretary of State shall provide to the Secretary of Defense and the Secretary of Commerce the license application and accompanying documents issued to the applicant, to the extent that the relevant Secretary indicates the need to receive such application and documents.

(c) Information sharing

The Secretary of State shall establish a procedure for sharing information with appropriate officials of the intelligence community, as determined by the Director of Central Intelligence, and with other appropriate Government agencies, that will ensure effective monitoring of transfers of MTCR equipment or technology and other missile technology.

(Pub. L. 90-629, ch. 7, § 71, as added Pub. L. 101-510, div. A, title XVII, § 1703, Nov. 5, 1990, 104 Stat. 1745.)

REPORT ON MISSILE PROLIFERATION

Section 1704 of Pub. L. 101-510 provided that:

"(a) **CONTENTS OF REPORT.**—Not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990], and every 180 days thereafter, the President shall submit to the Congress a report on international transfers of aircraft which the Secretary has reason to believe may be intended to be used for the delivery of nuclear, biological, or chemical weapons (hereinafter in this section referred to as 'NBC capable aircraft') and international transfers of MTCR equipment or technology to any country that is not an MTCR adherent and is seeking to acquire such equipment or technology, other than those countries excluded in subsection (b). Each such report shall include—

"(1) the status of missile and aircraft development programs in any such country, including efforts by such country to acquire MTCR equipment or technology and NBC capable aircraft and an assessment of the present and future capability of such country to produce and utilize such weapons;

"(2) a description of assistance provided, after the date of the enactment of this Act, to any such country, in the development of missile systems, as defined in the MTCR, and NBC capable aircraft by persons and other countries, specifying those persons and other countries which continue to provide MTCR equipment or technology to such country as of the date of the report;

"(3) a description of diplomatic measures that the United States has taken or that other MTCR adherents have made to the United States with respect to activities of private persons and countries suspected of violating the MTCR;

"(4) an analysis of the effectiveness of the regulatory and enforcement regimes of the United States and other MTCR adherents to control the export of MTCR equipment or technology;

"(5) a determination of whether transfers of MTCR equipment or technology by any country pose a significant threat to the national security of the United States;

"(6) a summary of advisory opinions issued under section 11B(b)(4) of the Export Administration Act of 1979 [50 App. U.S.C. 2410b(b)(4)] and under section 73(d) of the Arms Export Control Act [22 U.S.C. 2797b(d)]; and

"(7) an explanation of United States policy regarding the transfer of MTCR equipment or technology to foreign missile programs, including space launch vehicle programs.

"(b) **EXCLUSIONS.**—The countries excluded under subsection (a) are Australia, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Israel, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Spain, Turkey, and the United Kingdom.

"(c) **CLASSIFICATION.**—The President shall make every effort to submit all of the information required by subsection (a) in unclassified form. Whenever the President submits any such information in classified form, he shall submit such classified information in an addendum and shall also submit simultaneously a detailed summary, in unclassified form, of such classified information.

"(d) **DEFINITIONS.**—For purposes of this section, the terms 'missile', 'MTCR', 'MTCR equipment or technology', and 'MTCR adherent' have the meanings given those terms in section 74 of the Arms Export Control Act [22 U.S.C. 2797c]."

§ 2797a. Denial of transfer of missile equipment or technology by United States persons

(a) Sanctions

(1) If the President determines that a United States person knowingly—

(A) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 2778 of this title, section 2404 or 2405 of title 50, Appendix, or any regulations or orders issued under any such provisions,

(B) conspires to or attempts to engage in such export, transfer, or trade, or

(C) facilitates such export, transfer, or trade by any other person,

then the President shall impose the applicable sanctions described in paragraph (2).

(2) The sanctions which apply to a United States person under paragraph (1) are the following:

(A) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person for a period of 2 years—

(i) United States Government contracts relating to missile equipment or technology; and

(ii) licenses for the transfer of missile equipment or technology controlled under this chapter.

(B) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR, then the President shall deny to such United States person for a period of not less than 2 years—

(i) all United States Government contracts, and

(ii) all export licenses and agreements for items on the United States Munitions List.

(b) Discretionary sanctions

In the case of any determination made pursuant to subsection (a) of this section, the President may pursue any penalty provided in section 2778(c) of this title.

(c) Waiver

The President may waive the imposition of sanctions under subsection (a) of this section with respect to a product or service if the President certifies to the Congress that—

(1) the product or service is essential to the national security of the United States; and

(2) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(Pub. L. 90-629, ch. 7, § 72, as added Pub. L. 101-510, div. A, title XVII, § 1703, Nov. 5, 1990, 104 Stat. 1745.)

§ 2797b. Transfers of missile equipment or technology by foreign persons

(a) Sanctions

(1) Subject to subsections (c) through (g) of this section, if the President determines that a foreign person, after November 5, 1990, knowingly—

(A) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this chapter,

(B) conspires to or attempts to engage in such export, transfer, or trade, or

(C) facilitates such export, transfer, or trade by any other person,

or if the President has made a determination with respect to a foreign person under section

2410b(b)(1) of title 50, Appendix, then the President shall impose on that foreign person the applicable sanctions under paragraph (2).

(2) The sanctions which apply to a foreign person under paragraph (1) are the following:

(A) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years—

(i) United States Government contracts relating to missile equipment or technology; and

(ii) licenses for the transfer to such foreign person of missile equipment or technology controlled under this chapter.

(B) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years—

(i) all United States Government contracts with such foreign person; and

(ii) licenses for the transfer to such foreign person of all items on the United States Munitions List.

(C) If, in addition to actions taken under subparagraphs (A) and (B), the President determines that the export, transfer, or trade has substantially contributed to the design, development, or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

(b) Inapplicability with respect to MTCR adherents

Subsection (a) of this section does not apply with respect to—

(1) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

(2) any export, transfer, or trade of an item to an end user in a country that is an MTCR adherent.

(c) Effect of enforcement actions by MTCR adherents

Sanctions set forth in subsection (a) of this section may not be imposed under this section on a person with respect to acts described in such subsection or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing with respect to such acts.

(d) Advisory opinions

The Secretary of State, in consultation with the Secretary of Defense and the Secretary of Commerce, may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this section. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person

who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

(e) Waiver and report to Congress

(1) In any case other than one in which an advisory opinion has been issued under subsection (d) of this section stating that a proposed activity would not subject a person to sanctions under this section, the President may waive the application of subsection (a) of this section to a foreign person if the President determines that such waiver is essential to the national security of the United States.

(2) In the event that the President decides to apply the waiver described in paragraph (1), the President shall so notify the Congress not less than 20 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

(f) Additional waiver

The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

(1) the product or service is essential to the national security of the United States; and

(2) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(g) Exceptions

The President shall not apply the sanction under this section prohibiting the importation of the products of a foreign person—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(B) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(C) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;

(2) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or

(3) to—

(A) spare parts,

(B) component parts, but not finished products, essential to United States products or production,

(C) routine services and maintenance of products, to the extent that alternative

sources are not readily or reasonably available, or

(D) information and technology essential to United States products or production.

(Pub. L. 90-629, ch. 7, § 73, as added Pub. L. 101-510, div. A, title XVII, § 1703, Nov. 5, 1990, 104 Stat. 1746.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 App. section 2410b.

§ 2797c. Definitions

For purposes of this subchapter—

(1) the term “missile” means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems;

(2) the term “Missile Technology Control Regime” or “MTCR” means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

(3) the term “MTCR adherent” means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR;

(4) the term “MTCR Annex” means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

(5) the terms “missile equipment or technology” and “MTCR equipment or technology” mean those items listed in category I or category II of the MTCR Annex;

(6) the term “United States person” has the meaning given that term in section 2415(2) of title 50, Appendix;

(7) the term “foreign person” means any person other than a United States person;

(8)(A) the term “person” means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity; and

(B) in the case of countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A), the term “person” means—

(i) all activities of that government relating to the development or production of any missile equipment or technology; and

(ii) all activities of that government affecting the development or production of aircraft, electronics, and space systems or equipment; and

(9) the term “otherwise engaged in the trade of” means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee

or end user of the item to be exported or transferred.

(Pub. L. 90-629, ch. 7, § 74, as added Pub. L. 101-510, div. A, title XVII, § 1703, Nov. 5, 1990, 104 Stat. 1748.)

CHAPTER 43—INTERNATIONAL BROADCASTING

Sec.
2877a. Repealed.

§ 2871. Congressional findings and declaration of purpose

The Congress hereby finds and declares—

[See main edition for text of (1) to (4)]

(5) that in order to provide an effective instrumentality for the continuation of assistance to RFE/RL, Incorporated and to encourage a constructive dialog with the peoples of the Union of Soviet Socialist Republics, Eastern Europe, and Afghanistan (until the government in Kabul is replaced by a government achieved through a free act of self-determination), it is desirable to establish a Board for International Broadcasting.

(As amended Pub. L. 101-246, title III, § 304, Feb. 16, 1990, 104 Stat. 64.)

AMENDMENTS

1990—Par. (5). Pub. L. 101-246 substituted “(until the government in Kabul is replaced by a government achieved through a free act of self-determination)” for “(as long as it is under Soviet occupation)”.

§ 2873. Functions of Board

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 2877. Authorization of appropriations; foreign currency exchange rates fluctuations; merger and availability of excess amounts; radio modernization

(a) Authorization of appropriations

(1) There are authorized to be appropriated to carry out the purposes of this chapter—

(A) \$180,330,000 for the fiscal year 1990 and \$187,543,000 for the fiscal year 1991, at April 21, 1989, exchange rates, and such additional amounts for each such fiscal year as may be necessary to offset adverse fluctuations in foreign currency exchange rates after such date; and

[See main edition for text of (B), (2) and (3); (b) and (c)]

(As amended Pub. L. 101-246, title III, § 301(a), Feb. 16, 1990, 104 Stat. 63.)

AMENDMENTS

1990—Subsec. (a)(1)(A). Pub. L. 101-246 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “\$186,000,000 for fiscal year 1988 and \$207,424,000 for fiscal year 1989; and”.

§ 2877a. Repealed. Pub. L. 101-302, title III, § 320(a)(2), May 25, 1990, 104 Stat. 247

Section, Pub. L. 101-246, title III, § 302, Feb. 16, 1990, 104 Stat. 63, provided that any funds appropriated for Board of International Broadcasting would not be available for obligation or expenditure unless such funds were appropriated pursuant to an authorization for appropriations or if such funds were appropriated in excess of authorized level of appropriations.

CHAPTER 44—JAPAN-UNITED STATES FRIENDSHIP

§ 2903. Japan-United States Friendship Commission

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 2905. Administrative powers of Commission

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

CHAPTER 46—INTERNATIONAL INVESTMENT AND TRADE IN SERVICES SURVEY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3142, 3144 of this title; title 13 section 401.

§ 3101. Congressional statement of findings and declaration of purpose

[See main edition for text of (a)]

(b) Purpose

It is therefore the purpose of this chapter to provide clear and unambiguous authority for the President to collect information on international investment and United States foreign trade in services, whether directly or by affiliates, including related information necessary for assessing the impact of such investment and trade, to authorize the collection and use of information on direct investments owned or controlled directly or indirectly by foreign governments or persons, and to provide analyses of such information to the Congress, the executive agencies, and the general public. It is the intent of the Congress that information which is collected from the public under this chapter be obtained with a minimum burden on business and other respondents and with no unnecessary duplication of effort, consistent with the national interest in obtaining comprehensive and reliable information on international investment and trade in services.

[See main edition for text of (c)]